



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Section 319 Program Guidance: Key Components of an Effective State Nonpoint Source Management Program

FROM: Tom Wall, Director /s/ *John Hooten* 29 NOVEMBER 2012
Assessment and Watershed Protection Division

TO: State Water Division Directors
Water Division Directors, Regions I – X

OFFICE OF
WATER

With this memo EPA is releasing guidance on the key components of an effective state nonpoint source (NPS) management program. This guidance is an update to guidance issued by EPA in 1997. EPA intends to publish this guidance as an appendix to the forthcoming *Nonpoint Source Program and Grants Guidelines for States and Territories* in early 2013. However, EPA is releasing this guidance today to assist states and territories in their efforts to update their programs as expeditiously as possible. This guidance is a companion to, but distinct from, the forthcoming 319 grant guidelines.

The state's written NPS management program is the roadmap for all state NPS program activities, including activities supported by resources and programs other than CWA Section 319 funds. Updates to these state nonpoint source programs are vital for EPA and the states to ensure that section 319 funding, technical support and other resources are directed in an effective and efficient manner to support state efforts to address water quality issues. They will also better facilitate EPA's ability to meet the statutory requirement under CWA section 319(h)(8) to perform annual satisfactory progress determinations against annual milestones embedded in these state program plans prior to awarding annual 319(h) grants to states. Importantly, this guidance clarifies EPA's expectations that state programs are to be updated every five years.

Earlier this year, EPA revised the 1997 *Nine Key Elements of an Effective State Nonpoint Source Management Program* guidance based on input from the states and regions in a workgroup convened to strengthen the section 319 program ("Workgroup A"). This revised draft was reviewed by the EPA Regions and their comments were incorporated in June. ACWA distributed this further-revised document for state comment in June/July. In the ACWA review EPA heard from 16 states and carefully considered all comments. Most states were supportive of the guidance and update overall, but some had concerns. The following comments were shared by more than one state, and are followed by a brief description of how EPA responded in this guidance.

1) While no state disagreed with the premise that nonpoint source management programs should be updated regularly, states had different ideas on what the update interval should be. A majority of the states that commented expressed support for five-year update intervals, but others favored somewhat longer intervals.

EPA is retaining the 5-year update interval while making it clear that updates can be targeted (see #2 below).

2) Some states expressed concern that requiring frequent or wholesale updates to state nonpoint source management programs will be burdensome and consume valuable state resources that will dilute implementation efforts.

EPA has added language that a state does not need to undertake a comprehensive update unless significant program changes warrant a complete revision; instead, an update can target the parts of the program that are out-of-date and should focus on updating annual milestones and the schedule for program implementation.

3) Some states voiced opposition to including protection activities for high quality waters in their programs, and particularly to the concept of balance between protection and restoration. A couple of states perceived the term “balancing” to imply that EPA expects an equal program resource allocation split between restoration and protection.

EPA has reworded this to remove the term “balancing” and to clarify that states should describe how they will set priorities and allocate resources between restoring impaired waters and protecting healthy/high quality waters.

4) A few states are opposed to annual milestones or suggested that EPA soften this text; however annual milestones are mandated by the CWA and are important to the management program being current and relevant.

EPA retained annual milestones, but clarified that the annual milestones which are required by section 319 to be included in a state's NPS management program can be more general than would be expected in a state's annual section 319 grant workplan. However, milestones articulated in a state's NPS management program must be specific enough for the state to track progress and for EPA to determine satisfactory progress in accordance with section 319(h)(8).

5) A couple states opposed EPA's strong emphasis on state program coordination with USDA NRCS. *EPA retained the emphasis on leveraging with NRCS citing the significant resources that USDA's conservation programs can bring to bear on a state's nonpoint source management program, but dropped the phrase “every effort to coordinate and leverage with USDA NRCS.”*

The 1997 guidance with nine key elements has been shortened to eight key components. EPA has merged components 3 and 7 from the guidance (the gist of #7—identification of federal programs that are not consistent with a state's NPS management program was retained and merged with component #3). One state suggested renaming the “Nine Key Elements of an Effective State Nonpoint Source Management Program” to “Key Components...” to avoid confusion with the “9 Elements of Watershed-Based Plans.” EPA agrees and has incorporated this new title in this guidance.

EPA is committed to working with states to meet its priority goal to update at least 50 percent of state NPS management programs by September 2013, with the expectation that the remainder of state NPS management programs will be updated by September 2014.

If you have any questions or comments regarding this guidance, please contact me at 202-564-4179, wall.tom@epa.gov, or have your staff contact Lynda Hall, Chief of the Nonpoint Source Control Branch, at 202-566-1210, hall.lynda@epa.gov.

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